

Assembly Bill No. 1742

CHAPTER 455

An act to amend Sections 18621.9, 19104, 19120, 19368, 19411, and 23114 of, to amend and renumber Section 24328 of, and to add Section 19520 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2003. Filed
with Secretary of State September 22, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, Committee on Revenue and Taxation. Income and corporation taxes: interest: abatement: administration: minimum franchise tax.

Existing law requires the Franchise Tax Board to temporarily abate the assessment of interest on an erroneous refund for which an action for recovery is provided for under a specified statute, unless the taxpayer or related party has caused the erroneous refund or the erroneous refund exceeds \$50,000.

This bill would delete the second of these prohibitions.

Existing income tax laws provide for interest at a specified rate with respect to refunds and credits.

This bill would provide that any abatement of interest shall be made with reference to a specified law.

Existing law requires the Franchise Tax Board to administer collections for various nontax programs, including the child support collections program. Existing law, in conformance with the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), requires employers to report the name, address, and social security number of a new hire to the Employment Development Department within 20 days following the date the new employee was hired. One of the purposes of the PRWORA is to locate noncustodial parents for the purpose of enforcing child support orders.

This bill would authorize the Franchise Tax Board to use the information required by PRWORA, among other laws, to be reported to the Employment Development Department for the purpose of enforcing collections under nontax collection programs that the Franchise Tax Board is required to administer.

The Corporation Tax Law imposes a franchise tax on a corporation that incorporates or commences doing business in this state. The franchise tax is measured by the income earned by the corporation during the taxable year, but not less than the minimum franchise tax of \$800.

Existing law provides that the minimum franchise tax does not apply to the first taxable year of a corporation that incorporates or qualifies to do business on or after January 1, 2000. Existing law exempts a corporation from the franchise tax measured by the income earned by a corporation, if that corporation was inactive and if that corporation's taxable year was 15 days or less.

This bill would provide, for purposes of the minimum franchise tax, that an inactive corporation's first taxable year of 15 days or less will not be considered as that corporation's first taxable year.

The Corporation Tax Law provides that a scholarshare trust is established and maintained as a qualified state tuition program, as provided.

This bill would make a technical change to that provision.

Under existing law, California personal income tax returns may be filed electronically. Existing law requires all individual income tax returns prepared by specified income tax preparers that, during the prior calendar year, prepared more than 100 personal income tax forms, to be electronically filed in the subsequent calendar year, and each calendar year thereafter.

This bill would clarify that these provisions apply to returns to be filed on and after January 1, 2004.

The people of the State of California do enact as follows:

SECTION 1. Section 18621.9 of the Revenue and Taxation Code, as added by Chapter 228 of the Statutes of 2003, is amended to read:

18621.9. (a) If an income tax return preparer prepared more than 100 timely original individual income tax returns that were filed during any calendar year that began on and after January 1, 2003, and if in the current calendar year that income tax preparer prepares one or more acceptable individual income tax returns using tax preparation software, then, for that calendar year and for each subsequent calendar year thereafter, all acceptable individual income tax returns prepared by that income tax preparer shall be filed using electronic technology, as defined in Section 18621.5.

(b) For purposes of this section:

(1) "Income tax preparer" means a person that meets both of the following:

(A) Any person that prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, any return for the tax imposed by Part 10 (commencing with Section 17001) (hereafter Part 10). A person that only performs those acts described in clauses (i) through (iv) of Section 7701(a)(36)(B) of the Internal



Revenue Code, with respect to the preparation of a return for the tax imposed by Part 10, is not an income tax preparer for purposes of this section or for purposes of Section 19170.

(B) Any person that prepares returns for the tax imposed by Part 10 that is also required, by this article, to include an identification number on any return prepared by that tax preparer for the tax imposed by Part 10.

(2) “Original individual income tax return” means any return that is required, by Section 18501, to be made with respect to the tax imposed by Part 10. For purposes of subdivision (a), a “timely” original individual tax return means any original individual tax return that is filed, without regard to extensions, during the calendar year for which that tax return is required to be filed.

(3) “Acceptable individual income tax return” means any original individual tax return that is authorized by the Franchise Tax Board to be filed using electronic technology, as defined in Section 18621.5. For purposes of this section, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any rule, notice, or guideline issued by the Franchise Tax Board that identifies a tax return as an acceptable individual income tax return.

(4) “Tax preparation software” means any computer software program intended for accounting, tax return preparation, or tax compliance.

(c) Subdivision (a) shall cease to apply to an income tax preparer if, during the previous calendar year, that income tax preparer prepared no more than 25 original individual income tax returns.

(d) (1) This section applies to acceptable individual income tax returns required to be filed on and after January 1, 2004.

(2) This section may not be interpreted to require electronic filing of acceptable individual income tax returns that are required to be filed before January 1, 2004.

SEC. 2. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) The Franchise Tax Board may abate all or any part of any of the following:

(1) Any interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(2) Any interest on a payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to an officer



or employee of the Franchise Tax Board (acting in his or her official capacity) being dilatory in performing a ministerial or managerial act.

(3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) For purposes of subdivision (a):

(1) Except as provided in paragraph (3), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(2) (A) Except as provided in paragraph (4), after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization within the following periods:

(i) Thirty days in the case of any unpaid interest described under subdivision (a).

(ii) Ninety days in the case of any paid interest described under subdivision (a).

(B) The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(C) Except for clauses (i) and (ii) of subparagraph (A), the provisions of this paragraph are operative for requests for abatement of interest made on or after January 1, 1998. The provisions of clauses (i) and (ii) of subparagraph (A) shall apply to requests for abatement of interest made on or after January 1, 2001, in accordance with subdivision (d).

(3) If the Franchise Tax Board fails to mail its notice of determination on a request to abate interest within six months after the request is filed, the taxpayer may consider that the Franchise Tax Board has determined not to abate interest and appeal that determination to the board. This paragraph shall not apply to requests for abatement of interest made pursuant to paragraph (4).

(4) A request for abatement of interest related to a proposed deficiency may be made with the written protest of the underlying proposed deficiency filed pursuant to Section 19041 or with an appeal



to the board under Section 19045 in the form and manner required by the Franchise Tax Board. The action of the Franchise Tax Board denying any portion of the request for abatement of interest relating to the proposed deficiency shall be considered as part of the appeal of the action of the Franchise Tax Board on the protest of the proposed deficiency. If the taxpayer filed an appeal from the Franchise Tax Board's action on the protest of a proposed deficiency and the deficiency is final pursuant to Section 19048, the taxpayer may not thereafter request an abatement of interest accruing prior to the time the deficiency is final. However, the taxpayer may thereafter request an abatement pursuant to this section limited to interest accruing after the deficiency is final.

(c) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless the taxpayer (or a related party) has in any way caused that erroneous refund.

(d) The amendments made to this section by Chapter 863 of the Statutes of 2000 shall apply to requests for abatement of interest and appeals made on or after January 1, 2001.

(e) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), the amendments made by Chapter 600 of the Statutes of 1997 are operative with respect to taxable years beginning on or after January 1, 1998.

SEC. 3. Section 19120 of the Revenue and Taxation Code is amended to read:

19120. Any portion of any amount that has been erroneously refunded and that is recoverable by suit pursuant to Section 19411 shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the date of the payment of the refund. Abatement of interest under this section is governed by subdivision (c) of Section 19104.

SEC. 4. Section 19368 of the Revenue and Taxation Code is amended to read:

19368. If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Abatement of interest on



an amount due under this section is governed by subdivision (c) of Section 19104.

SEC. 5. Section 19411 of the Revenue and Taxation Code is amended to read:

19411. (a) The Franchise Tax Board may recover any refund or credit or any portion thereof that is erroneously made or allowed, together with interest at the adjusted annual rate established pursuant to Section 19521, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California within whichever of the following periods expires the later:

(1) Two years after the refund or credit was made.

(2) During the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment.

(b) Abatement of interest under this section is governed by subdivision (c) of Section 19104.

SEC. 6. Section 19520 is added to the Revenue and Taxation Code, to read:

19520. Unless otherwise specifically provided, if a provision of law, including Section 1088.5 and Section 1088.8 of the Unemployment Insurance Code, authorizes the use of information for tax enforcement purposes, the term “tax enforcement” includes the collection of any amount referred to the Franchise Tax Board for collection under a provision of law that authorizes the Franchise Tax Board to collect that amount in the same manner as an unpaid tax liability is collected by the Franchise Tax Board.

SEC. 7. Section 23114 of the Revenue and Taxation Code is amended to read:

23114. (a) A corporation shall not be subject to the taxes imposed by this chapter if the corporation did no business in this state during the taxable year and the taxable year was 15 days or less.

(b) The period of time for which a corporation is not subject to taxes imposed by this chapter as provided in subdivision (a) may not be considered a taxable year for purposes of subdivision (e) or paragraph (1) of subdivision (f) of Section 23153.

SEC. 8. Section 24328 of the Revenue and Taxation Code is amended and renumbered to read:

23711.5. The Golden State Scholarshare Trust, established pursuant to Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code, is an instrumentality of this state and the income of the Scholarshare trust shall be exempt from taxes imposed under this part. The Scholarshare trust is established and shall be maintained as a



qualified state tuition program as defined in Section 529 of the Internal Revenue Code.

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